10200–10248 SECTIONS 10(l) AND 10(k)—CC, CD, CE, AND CP CASES

10200 Statutory Priority

The Act accords priority to the processing of certain cases described in Section 10(l) in which injunctive relief may be appropriate. These cases are commonly referred to as "priority cases" and are designated under Agency procedures as follows:

- Section 8(b)(4)(A), (B), and (C) — CC cases
- Section 8(b)(4)(D) — CD cases
- Section 8(e) — CE cases
- Section 8(b)(7)(A), (B), and (C) — CP cases

10200.1 Timeliness Guidelines

Such cases must be handled with utmost dispatch, even though the disposition of cases having lesser priority may be somewhat delayed. The Regional Office should, at the time the charge is filed, or immediately thereafter, request the charging party to submit promptly (normally within 24 hours) evidence in support of the charge. The Regional Office should complete its investigation and make a decision within 72 hours. Submissions to the Division of Advice, if any, should be sent within 72 hours of the completion of the investigation, absent unusual circumstances. Once a charge has been determined to have merit, the Regional Office should promptly file for 10(l) injunctive relief, if appropriate. Sec. 10238–10248. Complaint—or in applicable CD cases, a Notice of 10(k) Hearing (Sec. 10214)—should issue within 5 days of the filing of any 10(l) petition. Where a 10(l) petition is appropriate, the ULP hearing should be scheduled within 28 days of issuance of complaint.

10200.2 Requests for Advice and Notification to Headquarters

The Regional Office should consult General Counsel Memoranda on Mandatory Advice Submissions to determine whether a statutory priority case must be submitted to the Division of Advice. Other cases may also warrant submission to Advice, because either the issues are novel or complex or the case is of broad interest.

Even if a case is not formally submitted to Advice, Regional Offices should notify Advice and the Division of Operations-Management of significant cases, involving, for example, defense industries, large numbers of employees, or highly publicized disputes.

Finally, Regional Offices should not hesitate to consult with Advice about questions that may arise during the processing of any statutory priority case.

10202–10204 CC CASES

10202 Conduct Proscribed by Section 8(b)(4)

Section 8(b)(4) prohibits a union from engaging in certain conduct described in subsections (i) and (ii) for the objects set forth in subsections (A), (B), (C) or (D). Generally, subsection (i) proscribes conduct that induces or encourages individuals employed by any person to engage in a strike or to cease performing other services. On the other hand, subsection (ii) proscribes conduct that threatens, coerces, or restrains any person. For a discussion of subsection (D), see Secs. 10206–10220.

If after preliminary investigation, the Regional Director has reasonable cause to believe that complaint alleging a violation of Section 8(b)(4)(A), (B), or (C) should issue, recourse to injunctive relief is provided for in Section 10(l) of the Act. Secs. 10238–10248.

10204 Settlement Notices in CC Cases

Every notice in a CC case addresses prohibited conduct, described in Section 8(b)(4)(i) or (ii) or both, and a prohibited object, described in subsections (A), (B), or (C). In cases involving more than one type of conduct, such as a case alleging violations of Section 8(b)(4)(i) and (ii)(B), a notice should contain one provision covering (i) conduct for the (B) object and a separate provision covering (ii) conduct for the (B) object. For this reason, the following language is divided into suggested "conduct" language and suggested "object" language. However, as in cases involving other sections of the Act, the Regional Office must consider all surrounding circumstances in determining the appropriate language. For instance, repeat conduct may require the use of broader language.

"Conduct" Language:

[for (i) conduct**]**

> **WE WILL NOT [**specify unlawful conduct in this case, e.g., strike, picket, etc.**] [**Construction project name or Employer name(s)**] or otherwise cause or attempt to cause any person's employees to strike or refuse to perform any work [insert appropriate object listed below].**

[for (ii) conduct**]**

WE WILL NOT [specify unlawful conduct in this case, e.g., threaten to strike, picket, etc.**] [**Construction project name or Employer name(s)**] or otherwise threaten, coerce or restrain [**Employer name(s)**] or any other person [**insert appropriate object listed below**].**

"Object" Language:

- 8(b)(4)(A) (Conduct compelling union membership)

  in order to force [Employer name(s)**] to join our Union or any other union.**

- 8(b)(4)(A) (Conduct compelling membership in Employer organization)

  in order to force or require [Employer name(s)**] to join [**Employer Organization**] or any other employer organization.**

- 8(b)(4)(A) (Conduct seeking 8(e) agreement)

  in order to force [Employer name(s)**] to enter into, or give effect to, [**identify the clause at issue, e.g., by section, title, date, or other recognizable identifier**] or any other agreement that is prohibited by Section 8(e) of the National Labor Relations Act. Section 8(e) prohibits employers and unions from entering into agreements requiring the employer to stop doing business with another person or stop handling the products of another employer.**

- 8(b)(4)(B) (Secondary conduct with cease doing business objective)

  in order to force [Secondary Employer name(s)**] to stop doing business with [**Primary Employer name(s)**] or any other person.**

- 8(b)(4)(B) (Secondary conduct with recognitional objective)

  in order to force [Primary Employer name(s)**] to recognize or bargain with [**Union name**], which has not been certified by the National Labor Relations Board as the employees' representative.**

- 8(b)(4)(C) (Primary conduct—recognitional objective—another union certified)

  in order to force [Employer name(s)**] to recognize or bargain with [**Union name**] instead of [**name of certified Union**], which has been certified by the National Labor Relations Board as the employees' representative.**

10206–10220 CD CASES AND SECTION 10(k)

10206 Conduct Proscribed by Section 8(b)(4)(D)

Section 8(b)(4)(D) prohibits a labor organization from engaging in conduct described in subsections (i) and (ii) of Section 8(b)(4) where an object is to force an employer to make a work assignment in a jurisdictional dispute. After preliminary investigation reveals a meritorious 8(b)(4)(D) charge, the Board is empowered under Section 10(k) to hear and determine the dispute involved and, in appropriate circumstances, to seek 10(l) relief. Secs. 10238–10248. On the other hand, if the Regional Office determines that the 8(b)(4)(D) charge lacks merit, the charge should be dismissed, absent withdrawal. See Pattern at Sec. 10122.14(a).

10208 Notice of Charge Filed in CD Cases

The Regional Office should promptly serve a copy of the charge together with a copy of a Notice of Charge Filed (see Pattern in Sec. 10210) on all parties to the dispute. Such parties include not only the charged and charging parties, but also any employer which controls the assignment of the work in dispute, even if it is not a charging party, and any union(s) or group(s) to which the work has been assigned or which claim the work in dispute. These additional parties should be included in the caption of the case. The Notice of Charge Filed as well as the charge shall be made part of the record in any 10(k) proceeding.

10210 Pattern for Notice of Charge Filed in CD Cases

NOTICE TO PARTIES OF 8(b)(4)(D) CHARGE

[Case Caption]

NOTICE OF CHARGE FILED

PLEASE TAKE NOTICE that the attached charge has been filed alleging that [Insert name of the charged party(ies)] has violated Section 8(b)(4)(D) of the National Labor Relations Act. The charge will be investigated by the Regional Office. If the charge is found meritorious, the National Labor Relations Board will hear and determine the work jurisdiction dispute involved in the charge pursuant to Section 10(k) of the Act unless, within 10 days of the receipt of this notice, the parties to the dispute submit to the Regional Office satisfactory evidence that they have adjusted the dispute or have agreed to a voluntary method of adjustment.

_____

Regional Director

National Labor Relations Board

Region _____

Date _____

10212 Disclaimer in CD Cases

A claim for work cognizable under Section 10(k) may be made by a labor organization or by an unrepresented group performing the work. If one of the competing groups involved in the dispute unequivocally disclaims the work, a jurisdictional dispute may no longer exist. The Regional Office should investigate the circumstances surrounding any disclaimer to evaluate whether the claim for work has truly been renounced. If the Regional Office concludes that there are no longer competing claims for the work, the charge should be dismissed and any notice of 10(k) hearing quashed.

10214 The 10(k) Hearing

If it appears that the charge has merit, the Regional Office should issue a Notice of 10(k) Hearing, unless the parties agree on a method of voluntary adjustment of the dispute or unless they actually adjust it. Sec. 10216.

10214.1 Notice of Hearing and Service

The Notice of Hearing should include in the caption all entities as described in Sec. 10208. The Pattern for Notice of Hearing is set forth below:

[Case Caption]

NOTICE OF HEARING

PLEASE TAKE NOTICE that on [date**], 20__, at [**hour and place**] and on consecutive days thereafter until concluded, a hearing officer of the National Labor Relations Board will conduct a hearing pursuant to Section 10(k) of the National Labor Relations Act. At the hearing, the parties will have the right to appear and present testimony regarding the dispute alleged in Case No. ___-CD-___ involving the assignment of the following work:**

[Insert description of work. Where appropriate, insert "THIS CASE INVOLVES THE NATIONAL DEFENSE."]

_____

Regional Director

National Labor Relations Board

Region _____

Date _____

Once the Regional Office has determined a hearing is appropriate, service of the Notice of Hearing should issue promptly in cases involving 10(l) relief. Sec. 102.90, Rules and Regulations require that such notice normally issue within 5 days after the petition for injunctive relief is filed. The Notice should be served on all entities named in the caption.

10214.2 Scheduling

Normally, a 10(k) hearing may not be set less than 10 days after service of the charge. In all cases involving the national defense and in other cases in the Regional Director's discretion, where special circumstances indicate that an expedited hearing would be in the public interest, 10(k) hearings should be scheduled consistent with their priority as described in Sec. 10200.1.

When scheduling an expedited hearing, the Regional Office must provide adequate notice to the parties. When the Regional Office proposes to set an expedited hearing, it should obtain and consider the parties' positions on an appropriate hearing date. What period is adequate depends on the circumstances, such as the urgency of the matter, the complexity of the issues, and the time reasonably required to prepare for hearing.

10214.3 National Defense Cases

All 10(k) notices of hearing in cases involving the national defense should contain the designation "This Case involves the National Defense." See Pattern in Sec. 10214.1. In such cases, briefs may not be filed without express permission of the Board. Sec. 102.90, Rules and Regulations.

10214.4 Hearing Officers

The 10(k) hearing is conducted by someone other than the person who investigated the charge, acted as counsel for the General Counsel in a companion CC case, or may prosecute a CD unfair labor practice case arising out of the dispute. When appropriate, Regional Offices may request an Administrative Law Judge to function as a hearing officer in more complex 10(k) hearings.

The hearing is conducted in the same manner as representation hearings. See Part Two Representation Casehandling Manual, Secs. 11180–11248. The text of Form 4669, Summary of Standard Procedures in Formal Hearings Held before the National Labor Relations Board pursuant to Petitions Filed under Section 9 of the National Labor Relations Act, as Amended, should be adapted for a 10(k) hearing and put into the record.

While the parties are responsible for supporting their respective contentions, the hearing officer is responsible for developing a complete record, including reasonable cause to believe that the respondent has violated Section 8(b)(4)(D) and the relevant factors for determining the assignment of the work.

Immediately after the close of the hearing, the hearing officer should forward to the Office of the Executive Secretary an appearance sheet containing the names, addresses, and fax numbers of all interested parties and their representatives.

10214.5 Expedited Transcript

Where a case is designated as "involving the National Defense" (Sec. 10214.3**)**, the Regional Office should order an expedited copy of the transcript of the 10(k) hearing, in order to hasten submission of the dispute to the Board for determination. The Regional

Office may also order an expedited copy of the transcript in other cases which, in its judgment, warrant more expeditious treatment by the Board.

10214.6 Hearing Officer's Report

As soon as possible after the close of the 10(k) hearing (48 hours absent unusual circumstances), the hearing officer should prepare and forward to the Office of the Executive Secretary a hearing officer's report. See Pattern in Sec. 10214.7. The report may be in the form of a memorandum from the hearing officer to the Executive Secretary. It should briefly summarize the issues and the evidence, but should make no recommendations or findings. Ordinarily, the report can and should be prepared from notes taken at the hearing, without waiting for the official transcript. This report is not served on the parties or counsel/representatives of record.

10214.7 Outline for Hearing Officer's Report

10(k) Hearing Officer's Report

1. BACKGROUND
    a. Date charge filed
    b. Date Notice of Hearing issued
    c. Dates hearing opened and closed
    d. Parties
        Charging Party
        Employer (if other than Charging Party)
        Charged Union
        Union Party in Interest
    e. Date briefs due
    f. Estimated transcript length
2. ISSUES
3. PROCEDURE

    Describe any procedural rulings made which may be challenged.
4. LABOR ORGANIZATIONS

    Describe any contested issues concerning labor organization status.
5. JURISDICTION

    Describe any contested issues concerning jurisdiction.

6. THE DISPUTE

   Describe the competing claims for the disputed work.

7. THE ALLEGED VIOLATION(S)

   Describe the conduct which allegedly constitutes the violation(s).

8. THE WORK IN QUESTION

9. POSITIONS OF THE PARTIES ON DISPUTED ISSUES

10. POSSIBILITY OF VOLUNTARY METHOD OF SETTLING THE DISPUTE

10214.8 Posthearing Motion

All motions filed after the close of the hearing by any party should be filed directly with the Board and should conform to the format and procedural requirements set out in Sec. 102.24, Rules and Regulations.

10216 Agreed-Upon Method of Voluntary Adjustment and Actual Adjustment in 10(k) Cases

The parties may have agreed on a method of voluntary adjustment of the dispute in which all the parties (including any unrepresented group) to the dispute are bound by the same arrangement for the resolution of the dispute. Examples of such arrangements include a stipulation, a contractual agreement to submit the dispute to the same arbitral forum or an agreed-upon Board election. One of the most common methods of adjustment is the mechanism established by the Building and Construction Trades Department, AFL–CIO on behalf of its constituent National and International Unions and signatory Employer Associations. If the Regional Office is investigating a charge involving parties eligible for participation in this plan, the Regional Office should investigate whether the parties are bound by the plan. Alternatively, the parties may have actually adjusted the dispute.

In either circumstance, Section 10(k) divests the Board of its power to resolve the jurisdictional dispute. Thus, even if the parties decline to invoke their agreed-upon method of adjustment, a 10(k) hearing may not be held. See also GC Memo 73-82 concerning authorization to process 8(b)(4)(D) cases and any supplementing memoranda.

10216.1 Agreed-Upon Method of Adjustment

The sections below describe procedures Regional Offices should follow when issues arise regarding an agreed-upon method of adjustment.

(a) *Satisfactory Evidence of Method of Adjustment:* Under Sec. 102.93, Rules and Regulations, if an agreed-upon method of adjustment exists, the Regional Office should defer action on the charge and withdraw any Notice of 10(k) Hearing. Thus, if the Regional Office is presented with satisfactory evidence of an agreed-upon method of

adjustment before the hearing opens, it should not issue the notice or withdraw any notice issued. If the issue arises during the hearing and the parties demonstrate to the Regional Office's satisfaction that an agreed-upon method of adjustment exists, the hearing officer should recess the hearing and the Regional Director should withdraw the notice of hearing. In either circumstance, the charge should be held in abeyance, pending the outcome of the parties' resort to that forum.

(b) *Disputed Evidence of Method of Adjustment:* If there is a genuine dispute as to the existence of an agreed-upon method of adjustment, the Regional Office should conduct a 10(k) hearing and include evidence on this issue in the record.

(c) *Evidence of Method of Adjustment Arises after Hearing:* If, after the hearing has closed, the parties report to the Regional Office that an agreed-upon method of adjustment exists, the Regional Office should direct the party or parties raising the issue to present such information to the Board. The Regional Office should also notify the Office of the Executive Secretary of this development. If appropriate, the Board may order the hearing to be reopened to receive evidence on this issue.

(d) *Parties Decline to Invoke Agreed-Upon Method of Adjustment:* The parties' failure to invoke an agreed-upon method does not authorize the Board to conduct a 10(k) hearing. Nevertheless, dismissal of the charge is not necessarily warranted. If the jurisdictional dispute continues, the Regional Office may issue an 8(b)(4)(D) complaint. Sec. 102.93, Rules and Regulations. If further proceedings will not effectuate the purposes of the Act, the Regional Office may dismiss the charge. If a party's reasons for failing to invoke a method of adjustment raise novel issues regarding whether an agreed-upon method exists, the Regional Office may issue a Notice of 10(k) Hearing and take evidence on this issue or consult with the Division of Advice on how to proceed.

10216.2 Actual Adjustment

An actual adjustment exists when the parties in fact "settle" the dispute—for example, when all parties fully agree to a resolution or when an agreed-upon method of voluntary adjustment culminates in a decision or award that resolves the dispute, regardless of whether the charged party is complying with the resolution.

On a satisfactory showing, at any time prior to the close of a 10(k) hearing, that the parties have actually adjusted their dispute, any hearing commenced should be recessed, any notice of hearing issued should be withdrawn and the charge should be dismissed if it is not withdrawn. If the Regional Office concludes there is disagreement as to the existence of an actual adjustment, the hearing should continue and evidence on this issue should be included in the record. If the parties report an actual adjustment to the Regional Office after the 10(k) hearing has closed, the Regional Office should direct the party or parties raising the issue to present such information to the Board. The Regional Office should also notify the Office of the Executive Secretary of this development.

Whenever the Regional Office is informed that an actual adjustment has been effected, it should also investigate whether the charged party is complying with the resolution. Sec. 10218.2.

10216.3 Unsolicited Withdrawal Request

The Regional Director may approve an unsolicited withdrawal request if made prior to the close of the 10(k) hearing. If a withdrawal request is submitted after the close of the hearing, the Regional Office should direct the charging party to submit the matter by motion to the Board. The Regional Office should also notify the Office of the Executive Secretary of this development.

10218 Disposition of Charge After Jurisdictional Determination or Award

Disposition of the charge following the issuance of a determination pursuant to a 10(k) award or an agreed-upon method of adjustment will depend on the conduct of the employer and/or charged party with respect to the terms of the award.

10218.1 Work Awarded to the Charged Party

If it is determined that employees represented by a charged union are entitled to perform the work in dispute, the Regional Director should dismiss the charge, absent withdrawal, regardless of whether the employer assigned the work consistent with the determination or whether the charged union engaged in further conduct in support of its claim. Upon dismissal or withdrawal of the charge, any related 10(l) injunction expires by operation of law.

10218.2 Work Not Awarded to the Charged Party

If, as a result of the jurisdictional dispute resolution procedure, the work is not awarded to the charged party, the Regional Office should follow the procedures set forth below:

(a) *Compliance:* If the charged party is complying with a determination made pursuant to a 10(k) award or an agreed-upon method of adjustment, the Regional Office should dismiss the charge, absent withdrawal.

(b) *Noncompliance:* If, despite a determination made pursuant to a 10(k) award or an agreed-upon method of adjustment, the charged party engages in conduct proscribed by 8(b)(4)(i) or (ii)(D), the Regional Office should issue complaint. Such complaint should allege the violative conduct that gave rise to the charge, as well as any subsequent conduct within the meaning of 8(b)(4)(i) or (ii)(D) engaged in by the charged party for the object of obtaining the work covered by the 10(k) award or voluntary adjustment.

Noncompliance by the charged party with a 10(k) award that does not constitute (i) or (ii) conduct (for example, a charged party's failure to provide the Regional Director notice of whether it intends to comply with the 10(k) award where such notice is required in the award) cannot be the basis for an independent violation of the Act. If complaint is otherwise appropriate, such noncompliance should, however, be pled in the complaint and established at trial because, under Sections 8(b)(4)(D) and 10(k), some noncompliance is a predicate for issuance of complaint.

10220 Settlements in CD Cases

The unique procedures in CD cases, in which a meritorious charge results in a 10(k) hearing or other determination of the jurisdictional dispute rather than a complaint, restrict the circumstances in which Board settlement agreements concerning CD cases are appropriate. A settlement agreement should be sought after a Regional Office determines that the charged union has failed to timely comply with a 10(k) award or a determination pursuant to a method of voluntary adjustment and that complaint should issue. However, formal or informal settlement of a CD charge is not appropriate at any stage prior to a 10(k) award or determination made pursuant to an agreed-upon method of adjustment. Rather than soliciting settlement of a CD charge, the Regional Office should dismiss the charge, absent withdrawal, following an unequivocal disclaimer of the work which resolves the dispute (Sec. 10212) or compliance with a 10(k) award or voluntary adjustment determination. Sec. 10218. The charge may also be withdrawn as a result of a resolution of the dispute short of an award of the work. Sec. 10216.3.

10220.1 Notices

The following language is suggested to assist in drafting proposed notices in 8(b)(4)(D) cases. However, as in cases involving other sections of the Act, the Regional Office must consider all surrounding circumstances in determining the appropriate language. For instance, repeat conduct may require the use of broader language.

- 8(b)(4)(i)(D)

  WE WILL NOT [specify unlawful conduct in this case, e.g., strike, picket, etc.**]** **[**Construction project or Employer name(s)**], or otherwise cause or attempt to cause employees to strike or refuse to perform any work, in order to force [**Employer name(s)**] to assign [**describe work in dispute**] to employees who are members of, or represented by, [insert name of Charged Union] rather than to employees [who are members of, or represented by, (**insert name of Assigned Union**)] [**or who are unrepresented**].**

- 8(b)(4)(ii)(D)

  WE WILL NOT [specify unlawful conduct in this case, e.g., threaten to strike, picket, etc.**] [**Construction project or Employer name(s)**] or otherwise threaten, coerce or restrain [**Employer name(s)**] or any other person in order to force [**Employer name(s)**] to assign [**describe work in dispute**] to employees who are members of, or represented by, [**insert name of Charged Union**] rather than to employees [who are members of, or**

represented by, (insert name of Assigned Union**)] [**or who are unrepresented**].**

10222–10224 CE CASES

10222 Conduct Proscribed by Section 8(e)

Section 8(e) prohibits both employers and unions from entering into agreements, express or implied, requiring the employer to cease doing business with another person or cease handling the products of another employer. An 8(e) charge may be filed against either an employer, a union or both entities.

All parties to the agreement alleged to be violative of Section 8(e) should be served with a copy of the charge, regardless of whether a party has been named as a charged party. Sec. 10040.7. If complaint issues, each noncharged party should be named in the caption of the complaint as "party to the contract." In appropriate circumstances, recourse to injunctive relief is provided for in Section 10(l) of the Act. Secs. 10238–10248.

10224 Settlements in 8(e) Cases

10224.1 Notices

Although Section 8(e) prohibits parties from "enter(ing) into" a prohibited contract or agreement, the language in the proposed notice for settlements involving Section 8(e) provides, in addition, that the charged employer and/or union will not "maintain, give effect to or enforce" the 8(e) contract or agreement. Such remedial language is necessary to give meaning and effect to Congressional intent to interdict "hot cargo" agreements.

The following language is suggested to assist in drafting proposed notices in Section 8(e) [Hot Cargo] cases:

> **WE WILL NOT maintain, give effect to, or enforce our agreement [**identify the clause at issue, e.g., by section, title, date, or other recognizable identifier**] with [**name of union or employer**], or any other agreement, which requires [**us or name of employer**] to stop doing business with any other person.**

10224.2 Nonparticipation of Necessary Parties

In any case in which only one party to the contract is charged, a settlement should not be approved by the Regional Director unless the noncharged party or parties to the contract:

- Is a party or signatory to the settlement agreement or
- Files with the Regional Director a statement that it knows of the proceeding and the proposed settlement and waives any right to be a party to the proceeding or to contest the settlement

A settlement agreement may be submitted to an Administrative Law Judge for approval where the noncharged party, having received proper notice, fails to appear and object.

10230–10236 CP CASES

10230 Conduct Proscribed by Section 8(b)(7)

Section 8(b)(7) regulates recognitional picketing. Each subparagraph prohibits a labor organization from picketing for an organizational or recognitional object in specified circumstances: subparagraph (A) prohibits organizational or recognitional picketing where the employer has lawfully recognized another labor organization and a question concerning representation cannot be raised; subparagraph (B) prohibits organizational or recognitional picketing where the Board has conducted a valid election within the preceding 12 months; and subparagraph (C) prohibits organizational or recognitional picketing which continues beyond a "reasonable period of time, not to exceed 30 days," unless a petition has been filed. Subparagraph (C) also contains two significant provisos. Under the first, when a petition has been filed within a reasonable period after the picketing began and an 8(b)(7)(C) charge has been filed, an expedited election may be directed. The second proviso exempts from the restrictions of that subparagraph picketing for the purpose of truthfully advising the public that an employer does not employ members of, or have a contract with, a labor organization, as long as such picketing does not have the effect of causing disruption of deliveries or a work stoppage.

In any 8(b)(7)(A) case in which the recognized union has been certified by the Board, an 8(b)(4)(C) charge may also be appropriate.

In appropriate circumstances, recourse to injunctive relief is provided for in Section 10(l) of the Act. Secs. 10234 and 10238–10248.

10232 Representation Petitions and 8(b)(7) Charges

In some 8(b)(7) cases, a representation petition will be filed about the same time as the charge. Processing of these cases requires the use of the unique procedures described below.

10232.1 Representation Petitions and 8(b)(7)(A) and (B) Charges

If a concurrent 8(b)(7)(A) or (B) charge and a representation petition have been filed, the petition should be held in abeyance pending the Regional Office determination of the charge. If merit is found to the charge, the petition should be dismissed, because no question concerning representation can be raised in those circumstances. The Regional Office should include any petitioner not a party to the ULP proceeding on the service sheet. The Regional Office should also advise such petitioner that it will be considered a party with an interest in the ULP proceeding limited solely to receipt of a copy of the order or other document that operates to finally dispose of the proceeding. See Pattern 74 in Sec. 10236.5.

If no merit is found to the charge, the petition should be processed in accordance with standard representation case procedures.

10232.2 Expedited Election Procedures under Section 8(b)(7)(C)

In the following circumstances, the Regional Office should invoke the expedited procedures set forth in Sec. 102.73–102.82, Rules and Regulations and, if warranted, conduct an expedited election:

- An 8(b)(7)(C) charge is filed and
- A representation petition is filed before the picketing has exceeded a reasonable period of time

Under the expedited procedures neither a showing of interest nor a separate demand for recognition is required to support the petition. Likewise, the requirement for an Excelsior list does not apply in these elections. *Excelsior Underwear, Inc.*, 156 NLRB 1236, 1242 fn. 14 (1966); Representation Casehandling Manual, Sec. 11312.1(k). The eligibility date typically would be the payroll period ending date immediately preceding the issuance of the direction of election.

(a) *Processing Petition without Hearing:* If it is determined that an election is warranted, the Regional Director may direct an election without a hearing. Sec. 102.77, Rules and Regulations. The Direction of Election and Notice of Election should include the description of the unit, the eligibility date and the time, manner and place of conducting the election. See Pattern 72 in Sec. 10236.3. Any party may file a request for special permission to appeal the direction of election to the Board. In such circumstances, unless otherwise ordered by the Board, review by the Board will not stay the election. The Regional Office should, however, impound the ballots pending further action by the Board.

(b) *Processing Petition with Hearing:* If the Regional Director believes that certain issues must be resolved before conducting an election, a hearing may be held. See Patterns 70 and 71 in Secs. 10236.1 and .2, respectively. Issues relating to the propriety of processing the petition under the expedited procedures, as for instance whether the petition was timely filed or whether subparagraphs (A) or (B) of Section 8(b)(7) are applicable, are not appropriate for hearing. The hearing officer must be familiar with the expedited procedures set forth in Sec. 102.77(b), Rules and Regulations, which govern the conduct of such proceedings.

(c) *Disposition of the Charge:* Pending the determination of whether to direct an election under the expedited procedures, no formal action should be taken on the 8(b)(7)(C) charge. If such an election is directed, the 8(b)(7)(C) charge should be dismissed. Sec. 102.81, Rules and Regulations. The dismissal letter should advise the charging party that, pursuant to Sec. 102.81(a), Rules and Regulations, any appeal, in order to be timely, must be filed within 7 days of service of the dismissal letter. See Pattern 73 in Sec. 10236.4.

If the Regional Director dismisses the petition or determines that an expedited election is not appropriate, formal action on the 8(b)(7)(C) charge should be taken promptly. See Pattern 75 in Sec. 10236.6**,** regarding refusal to process under the expedited procedures.

10234 Concurrent 8(b)(7) and 8(a)(2) Charges; Effect on 10(l) Proceedings

10234.1 Meritorious 8(a)(2) Charges and 8(b)(7)(A) Cases

An 8(a)(2) violation is a defense to an otherwise meritorious 8(b)(7)(A) charge since an 8(b)(7)(A) violation is premised on an existing lawful collective-bargaining relationship. Accordingly, upon finding merit to such an 8(a)(2) charge, the Regional Office should dismiss the 8(b)(7)(A) charge.

10234.2 Meritorious 8(a)(2) Charges and 8(b)(7)(C) Cases

The relationship between a meritorious 8(a)(2) and an 8(b)(7)(C) charge raises several issues. Section 8(b)(7)(C) anticipates that if a timely petition is filed, an expedited election will be ordered and the 8(b)(7)(C) charge will be dismissed. However, a meritorious 8(a)(2) charge may block the processing of the petition and prevent the Regional Office from ordering an expedited election. Accordingly, a Regional Office should proceed as set forth below.

(a) An 8(a)(2) violation is not a defense to an 8(b)(7)(C) charge. Accordingly, even if merit is found in the related 8(a)(2) case, the Regional Office should issue complaint, absent settlement, on a meritorious 8(b)(7)(C) charge, absent the filing of a timely petition.

(b) Since the second proviso to 10(l) bars 10(l) proceedings to enjoin an 8(b)(7) violation if merit is found to an 8(a)(2) charge against the picketed employer, an injunction should not be sought.

(c) A valid 8(a)(2) charge may block the processing of a representation petition. See Representation Casehandling Manual, Secs. 11730–11731, regarding the "blocking charge" policy and a Regional Director's discretion to process a petition notwithstanding a blocking charge. If a representation petition is filed within a reasonable period after commencement of the picketing, further processing of the 8(b)(7)(C) charge should be held in abeyance until the 8(a)(2) charge no longer blocks the petition, at which time the Regional Office should proceed as set forth above in Sec. 10232.2(c).

10234.3 Nonmeritorious 8(a)(2) Charges

If the Regional Office finds no merit to the 8(a)(2) charge, it should dismiss the charge and, if the circumstances so require, the Regional Director may institute 10(l) proceedings without waiting for the appeal period to expire. The appeal period for such a dismissed charge is 7 days. Sec. 102.81(c), Rules and Regulations. To ensure expedited resolution of any appeal, if the Regional Office anticipates an appeal, it should, upon dismissal of the 8(a)(2) charge, notify the Office of Appeals of the pending 8(b)(7) case. If an appeal is filed, the Regional Office should consult with the Injunction Litigation Branch regarding 10(l) considerations.

10236 Patterns for Documents Related to 8(b)(7) Cases

Set forth below are suggested patterns for the preparation of certain documents related to 8(b)(7) cases. Of course, the patterns should be carefully reviewed and modified as appropriate to fit the circumstances of individual cases.

10236.1 Pattern 70, Notice of Expedited Representation Hearing, Section 8(b)(7)(C)

For discussion about expedited representation hearings, see Sec. 10232.2(b).

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION ____

[Name of Party**]**

and **Case [**Number**]**

[Name of Party**]**

NOTICE OF EXPEDITED REPRESENTATION HEARING

The Petitioner filed a petition pursuant to Section 9(c) of the National Labor Relations Act, and [Charging Party name**] filed a related charge under Section 8(b)(7)(C) of the Act. I have concluded that there is a question affecting commerce as to whether the employees in the unit described in the petition want to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.**

Accordingly, YOU ARE NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, on the [date], 20__, at _____. m., (and on consecutive days thereafter) a hearing will be conducted in [location**] before a Hearing Officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise and give testimony. Because a related charge under Section 8(b)(7)(C) was filed, the hearing will be conducted in accordance with the expedited procedures of Section 102.77(b) of the Board's Rules and Regulations.**

_____

Regional Director

National Labor Relations Board

(Address**)**

Date

10236.2 Pattern 71, Order Consolidating Cases and Notice of Expedited Representation Hearing

For discussion about expedited representation hearings, see Sec. 10232.2(b).

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION ____

[Name of Party**]**

and **Case [**Number**]**

[Name of Party**]**

[Name of Party**]**

and **Case [**Number**]**

[Name of Party**]**

ORDER CONSOLIDATING REPRESENTATION CASES
AND
NOTICE OF EXPEDITED REPRESENTATION HEARING

The Petitioners filed petitions pursuant to Section 9(c) of the National Labor Relations Act and a related charge was filed under Section 8(b)(7)(C) of the Act.

I have concluded that there is a question affecting commerce as to whether the employees in the units described in the petitions want to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act. In order to effectuate the purposes of the Act,

and to avoid unnecessary costs or delay, I HEREBY consolidate the petitions for hearing.

Accordingly, YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, on the [date**], 20__, at ____ __.m., (and on consecutive days thereafter) a hearing will be conducted in [**location**] before a Hearing Officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise and give testimony. Because a related charge under Section 8(b)(7)(C) was filed, the hearing will be conducted in accordance with the expedited procedures of Section 102.77(b) of the Board's Rules and Regulations.**

_____

Regional Director

National Labor Relations Board

(Address**)**

Date

10236.3 Pattern 72, Regional Director's Direction of Expedited Election

For discussion about expedited election, see also Sec. 10232.2(a).

Petitioner

Employer

Unions

Re: [Case Name**]**

Case [Number**]**

Appropriate Salutation:

On the basis of the Region's investigation of the petition in Case __-R__-_____ and related charge in Case __-CP-_____, I have

decided to conduct an expedited election by secret ballot pursuant to Sections 8(b)(7)(C) and 9(c) of the Act and Section 102.77 of the Board's Rules and Regulations. This election will determine whether the employees in the unit covered by the petition want to be represented for purposes of collective bargaining by [name of union**] [or** (name of other interested unions)**] pursuant to Section 9(c) of the National Labor Relations Act, or by no union.**

Accordingly, a secret ballot election will be conducted as described in the enclosed Notice of Election among the employees in the following appropriate unit:

[Description of Unit**]**

Your cooperation will be appreciated.

Very truly yours,

_____

Regional Director

Enclosure: Notice of Election

10236.4 Pattern 73, Dismissal of 8(b)(7)(C) Charge (When Regional Office Has Directed Expedited Election)

For discussion of this topic, see also Sec. 10232.2(c).

[Charging Party**]**

Re: [Case Name**]**

Case [Number**]**

Appropriate Salutation:

The Region has carefully investigated and considered your charge against [Charged Party name**] alleging a violation of Section 8(b)(7)(C) of the National Labor Relations Act. The investigation disclosed that a timely valid representation petition has been filed in Case __-R__-_____ within a reasonable time from the commencement of the picketing involved in the charge.**

Decision to Dismiss and Conduct Election: **Section 8(b)(7)(C) of the Act permits a union to picket to obtain recognition if a representation petition is filed either before, or within a reasonable period of time of, such picketing. Therefore, I am dismissing your charge. Pursuant to the expedited election procedures of 8(b)(7)(C) and Section 102.77 of the Board's Rules and Regulations, I have separately directed an expedited election in Case __-R__-_____.**

Your Right To Appeal: **The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board. However, filing an appeal will not stay the holding of the election. If you wish to file an appeal, please note the following:**

Appeal Due Date: **The appeal must be received by the General Counsel in Washington, DC by the close of business at 5:00 p.m. [**EST or EDT, as appropriate**] on [**7 days from issuance**]. However, if you mail the appeal it will be considered timely if it is postmarked no later than one day before the due date. The appeal may not be filed by facsimile transmission or through the Internet.**

Extension of Time to File Appeal: **Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for extension of time may be made by mail, facsimile transmission or through the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate. Any**

request for an extension of time must be received no later than the appeal due date indicated above. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

Appeal Contents: **You are encouraged to submit a complete statement setting forth the facts and the reasons why you believe the decision to dismiss your charge was incorrect. However, the enclosed Appeal Form (NLRB-4767) by itself will be treated as an appeal if timely filed upon the General Counsel and me.**

Address for Appeal: **The appeal should be sent to the General Counsel of the National Labor Relations Board, Office of Appeals, 1099 14th Street, NW, Washington, DC 20570. You should send a copy of the appeal to me.**

Notice to Other Parties of Appeal: **You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.**

Very truly yours,

Regional Director

cc: Charged Party
Other Parties
Attorney(s) or Representative(s) of record
General Counsel, Office of Appeals

10236.5 Pattern 74, Dismissal of Petition—Meritorious 8(b)(7)(A) or (B) Charge

For discussion of this topic, see Sec. 10232.1.

Petitioner

Petitioner's representative

Re: [Case Name**]**

Case [Number**]**

Appropriate Salutation:

The Region has investigated the petition you filed in Case __-R__-_____ and a related charge in Case __-CP-_____ filed under Section 8(b)(7) of the Act.

[If the charge alleges a violation of 8(b)(7)(A), the following language is suggested**]**

Decision to Issue Complaint and Dismiss Petition: **Based on that investigation, I have decided to issue an unfair labor practice complaint alleging that the picketing involved in the charge in Case __-CP-_____ is violative of Section 8(b)(7)(A) of the Act. In this regard, the investigation disclosed that [**incumbent union**] is the currently certified collective-bargaining representative and is party to a collective-bargaining agreement which acts as a bar to a petition. Accordingly, no question concerning representation can be raised at this time and I am dismissing your petition.**

[If the charge alleges a violation of 8(b)(7)(B), the following language is suggested**]**

Decision to Issue Complaint and Dismiss Petition: **Based on that investigation, I have decided to issue an unfair labor practice complaint alleging that the picketing involved in the charge in Case ___-CP-_____ is violative of Section 8(b)(7)(B) of the Act. In this regard, the investigation disclosed that a valid election under Section 9(c) of the Act has been conducted within the preceding twelve months. Accordingly, no question concerning representation can be raised at this time and I am dismissing your petition.**

Reinstatement of the Petition: **Upon a request by the Petitioner after disposition of Case ___-CP-_____, the petition may be reinstated, if appropriate. Accordingly, a copy of the order or other document that disposes of that case will be sent to the Petitioner.**

Right to Request Review: **Pursuant to Section 102.71 of the Board's Rules and Regulations, you may appeal the decision to dismiss the petition by filing a request for review by close of business (**14 days from date of the letter**) with the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. Eight copies of the request for review must be filed with the Executive Secretary and a copy of the request for review must be served on each of the other parties to the case, as well as on the Regional Office.**

Upon good cause shown, the Board may grant special permission for an extension of time to file the request for review. A request for extension of time should be submitted to the Executive Secretary in Washington and a copy of any such request for extension of time should be submitted to each of the other parties to this proceeding.

The request for review and any request for extension of time must include a statement that a copy has been served on the Regional Office

and on each of the other parties to the case in the same or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

_____

Regional Director

cc:

Employer - Union

Interested Labor Organization(s)

[Petitioner in R case, if not a party in ULP case**]**

Office of Executive Secretary

National Labor Relations Board

10236.6 Pattern 75, Refusal to Process Under Expedited Procedure

For discussion of this topic, see Sec. 10232.2(c).

[Petitioner**]**

Re: [Case Name**]**

Case [Number**]**

Appropriate Salutation:

The Region has investigated the petition you filed in Case __-R__-_____ and the related charge in Case __-CP-_____ alleging a violation of Section 8(b)(7)(C) of the Act.

Decision Not to Expedite Election: **Although Section 8(b)(7)(C) provides for an expedited election in certain circumstances, I have concluded that an expedited election is not warranted because the petition was not filed within a reasonable time after the picketing began. Although I will not process the petition under expedited procedures, I will process it in the normal manner, in accordance with the provisions of Section 9(c)(1) of the Act and Subpart C of the Board's Rules and Regulations.**

Submission of Evidence: **Pursuant to the requirements of Section 9(c)(1) of the Act and the Board's Rules and Regulations, if you have not already done so, please furnish evidence that [**e.g.**]**

- **[**A substantial number of employees wish to be represented by the petitioner for the purposes of collective bargaining.**]**
- **[**A substantial number of employees do not desire to be represented for collective-bargaining purposes by the labor organization currently certified (recognized).**]**
- **[**A labor organization has presented a claim to the petitioner to be recognized as the representative of the petitioner's employees as defined in Section 9(a) of the Act.**]**

Unless such evidence is submitted by close of business [date**], I will dismiss the petition.**

Very truly yours,

_____

Regional Director

cc: Other parties

Office of Executive Secretary

National Labor Relations Board

10238–-10248 INJUNCTIVE RELIEF UNDER SECTION 10(l)

10238 Section 10(l)

Section 10(l) directs that, whenever a Regional Office has found reasonable cause to believe a charged party has violated Section 8(b)(4)(A), (B), or (C), 8(b)(7) or 8(e), the Regional Office should seek injunctive relief, pending the Board's disposition of the unfair labor practice complaint. Section 10(l) further provides that such relief may be sought in 8(b)(4)(D) cases "[i]n situations where such relief is appropriate." Secs. 102.95–102.97, Rules and Regulations; Secs. 101.37–101.38, Statements of Procedure.

The Regional Office should request expedited consideration of its 10(l) petition from the district court. If the district court issues an order to show cause returnable at an unduly late date and the circumstances demonstrate a need for more immediate relief, the Regional Office may wish to consider seeking a temporary restraining order. Sec. 10244.

For detailed guidance on procedural or substantive matters regarding 10(l) litigation, Regional Offices should consult relevant GC Memoranda and material distributed by the Injunction Litigation Branch. Regional Offices may also seek assistance from the Injunction Litigation Branch through formal submissions or informal contacts.

On the other hand, if the charged union ceases the alleged unlawful conduct and the Regional Office is satisfied that the conduct will not resume, the Regional Office should defer filing a petition.

10240 Injunctive Relief in CD Cases

Section 10(l) does not mandate injunction proceedings in CD cases. The Regional Office should institute such proceedings when it determines that there is reasonable cause to believe that the charged union has engaged in conduct proscribed by Section 8(b)(4)(D), unless the conduct has ceased and the Regional Office is satisfied that the conduct will not resume

If 10(l) proceedings are otherwise warranted, they are not precluded by the fact that the dispute is to be resolved by resort to an agreed upon method of resolution, rather than a 10(k) proceeding. If an agreed upon method exists but the parties have not invoked it (Sec. 10216.1(d)), the Regional Office should consult with the Division of Advice before instituting 10(l) proceedings. See GC Memo 73-82 concerning authorization to process 8(b)(4)(D) cases and related 10(l) petitions.

10242 Initiating 10(l) Proceedings

Neither an unfair labor practice complaint nor a Notice of 10(k) Hearing is required before filing for 10(l) relief. Accordingly, as soon as the Regional Office determines that the charge is meritorious and complaint or 10(k) notice should issue, it

should determine whether the charged union will cease the conduct and refrain from resuming it. If the union fails to provide adequate assurances, the Regional Office should immediately file a petition for 10(l) relief. Although settlement negotiations may be warranted before 10(l) proceedings are instituted, filing should not be deferred when such negotiations become protracted or are unreasonably delayed. The Board's Statements of Procedure explicitly give a Regional Director discretion to dispense with a portion of the investigative or settlement process as appears necessary in light of the nature of the proceeding and the public interest. Secs. 101.4 and .7, Statements of Procedure.

10244 Temporary Restraining Orders in 10(l) Proceedings

Section 10(l) provides that a district court may issue a temporary restraining order (TRO) without notice, limited to 5 days, if the Board shows "substantial and irreparable injury to the charging party will be unavoidable. . . ." For guidance regarding processing applications for TROs see GC Memo 75-18.

10245 Post 10(l) Informal Settlements

When a 10(l) injunction has been obtained prior to the settlement of a case, the standard provision for withdrawal of the complaint on execution of the settlement should be altered through an addendum to the settlement agreement form to provide for withdrawal of complaint upon closing of the matter in compliance. Sec. 10146.4.

10246 Appeals and Contempt of District Court Orders in 10(l) Proceedings

The Injunction Litigation Branch handles all appeals from district court orders in 10(l) cases. Accordingly, whenever the requested relief is denied in whole or in part, the Regional Office should immediately notify the Injunction Litigation Branch. As soon as possible, the Regional Office should forward copies of the court's decision or order, its petition, supporting memoranda and exhibits, and the respondent's answer or opposition and supporting papers, together with the Regional Office's recommendation on whether to take an appeal.

If the respondent notifies the Regional Office it intends to appeal from the grant of an injunction or serves the Regional Office with a notice of appeal, the Regional Office should immediately notify the Injunction Litigation Branch and forward a copy of the notice of appeal.

Whenever it is claimed that an injunction is being violated, the Regional Office should notify the respondent of the claim and conduct an investigation. When the investigation reveals that the respondent was engaged in arguably contumacious conduct, the Regional Office should submit to the Injunction Litigation Branch a recommendation on whether to institute contempt proceedings, together with the district court papers described in the preceding paragraph.

10248 Processing of Underlying Unfair Labor Practices in 10(l) Cases

In every matter in which the Regional Office seeks injunctive relief from a district court, Secs. 102.95–102.97, Rules and Regulations require that every stage of the unfair labor practice case be expedited. To that end, the Regional Office should:

- Issue complaint within 5 days of filing the 10(l) petition
- Schedule the hearing within 28 days of issuance of complaint
- Notify the Administrative Law Judge that 10(l) relief has been sought or obtained and, on the record, request that the matter be expedited
- Oppose any unwarranted attempt by any party to delay the proceeding
- In any brief filed with the Board, note that 10(l) relief has been sought or obtained and request that the matter be expedited
- Notify the Office of the Executive Secretary when the case is transferred to the Board